IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY EIGHTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 8949 of 2005

Between:

New Educational Society, 1-50, Kapra main road,
Road opp. Radhika Cinema, Hyderabad - 500 062. rep.by its
President Sri. R.P.Seth, S/o. Sri Ram Seth, aged: 58 years.

..... PETITIONER

AND

1 Union of India, Ministry of Defence,
rep. by its Secretary, New Delhi-110 001.
2 Ordance Factory Medak, Indian Ordanance Factories,
Yeddumailaram - 502 205. Medak District, rep. by its Its General Manager.
3 Sri. V.M.Rao, Joint General Manager (Admin-II),
Ordanance Factory Medak, Yeddumailaram - 502 205.
Medak District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to order or orders or writ more particularly in the nature of writ of Mandamus declaring the action of respondent Nos.2 and 3 in issuing the impugned notice bearing No.02/19033/OFMK/ESTT/05-06, dt.21.03.2005 as arbitrary, illegal contrary to the provisions of section 106 of Transfer of property Act, violative of principles of natural justice and infringed the rights guaranteed under Articles 14, 19(2)(g) and 300(A) of Constitution of India and quash the notice with ref.no.02/19033/OFMK/ESTT/05-06, dt.21.03.2005 or pass such other order or orders.

Counsel for the Petitioner : MR. VENU KUMAR CHINTALA

Counsel for the Respondents: MR. A.RAJASHEKAR REDDY (ASST.SOLICITOR GEN.)

The Court at the stage of admission made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.8949 OF 2005

ORDER :

This writ petition is filed declaring the action of the respondents 2 and 3 in issuing the impugned notice dated 21-03-2005 as arbitrary and illegal.

Admittedly, the petitioner Society was permitted to run the school by entering into indenture of lease with the respondents 2 and 3. Under the impugned notice, the petitioner was informed that it has been decided by the General Manager of the 2nd respondent to terminate the contract from the academic year 2005-06 and as such the petitioner will not be permitted to carry out any activities to run the school in the next academic year and the petitioner was also called upon to hand over the building with infrastructure facilities provided by the Lessor to the factory authorities by 30-04-2005. The said action is questioned in this writ petition contending that the impugned notice of termination of contract was issued without any prior notice to the petitioner and without providing any right of hearing and without issuing any notice as contemplated under the Transfer of Property Act, 1882. It is also contended that since the agreement provides for an arbitration clause, the dispute, if any, shall be referred to the Arbitrator and in spite of the fact that the petitioner made such a request, the respondents 2 and 3 failed to consider the same. Hence, the impugned notice is liable to be declared as arbitrary and illegal and liable to be set aside.

At the outset, it is to be noted that on the basis of the averments in the affidavit as well as the material produced by the petitioner, it is clear that the issues raised for

adjudication are essentially founded on a dispute between the parties pursuant to the contract entered in between them. Apparently, the agreement entered into between the parties is not in exercise of any statutory power and as such it is not a statutory contract. In the affidavit itself, it is stated that the impugned notice was issued invoking clause No.3 of the agreement.

The law is well settled that in a case of concluded contract voluntarily entered into between the parties where the terms and conditions are not regulated by any statute as such, the obligations which arise out of such contract cannot be dealt with under Article 226 of the Constitution of India. Since the relief sought is nothing but enforcement of terms and conditions of a non-statutory contract, I am not inclined to entertain this writ petition.

Accordingly, leaving it open to the petitioner to work out the appropriate remedy, the Writ Petition is dismissed. No costs.

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28th April, 2005.

Gbs

To

1 The Secretary, Union of India, Ministry of Defence,
New Delhi-110 001.
2 The General Manager, Ordance Factory Medak, Indian Ordanance Factories,
Yeddumailaram - 502 205. Medak District.

3 The Joint General Manager (Admin-II), Sri. V.M.Rao,
Ordanance Factory Medak, Yeddumailaram - 502 205.
Medak District.

4. Two CD copies.